

# Shire of Denmark Town Planning Scheme No. 3 Amendment No. 145



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***SHIRE OF DENMARK  
TOWN PLANNING SCHEME No. 3  
AMENDMENT No. 145***

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File No: .....

Part of Agenda: .....

## MINISTER FOR PLANNING

### Proposal to Amend a Local Planning Scheme

1.	Local Authority:	Shire of Denmark
2.	Description of Local Planning Scheme:	Town Planning Scheme No. 3
3.	Type of Scheme:	District Zoning Scheme
4.	Serial No. of Amendment:	145
5.	Proposal:	Removing Condition xxiv) from the "Tourist (T1)" zone provisions under Appendix XIII – Schedule of Tourist Zones.

**PLANNING AND DEVELOPMENT ACT 2005**

**RESOLUTION DECIDING TO AMEND A LOCAL PLANNING  
SCHEME**

**Shire of Denmark  
Town Planning Scheme No. 3  
Amendment No. 145**

**RESOLVED** that the Council, in pursuance of Section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

Removing Condition xxiv) from the “Tourist (T1)” zone provisions under Appendix XIII – Schedule of Tourist Zones.

The Amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:

- The amendment is consistent with the objectives identified in the scheme for the Tourist zone;
- The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and
- The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.

Dated this ..... day of ..... 20....

.....  
Chief Executive Officer

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***AMENDMENT REPORT***

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This Amendment Document has been prepared on behalf of the owner of Lot 9 on Survey Strata Plan 72562 Mount Shadforth Road, Shadforth (the site) to support a request to remove Condition xxiv (Condition 24) from the “Tourist (T1)” zone provisions as it relates to Lot 9 on Survey Strata Plan 72562 Mount Shadforth Road, Shadforth under the Shire of Denmark’s Town Planning Scheme No.3 (the Scheme).

Karri Mia, which to date has been developed by the current landowner, comprises the Karri Mia Resort. The resort was originally zoned and developed with 5 chalets, 10 bungalows, a caravan park, a caretaker’s residence, Chimes Resort and restaurant and function centre.

Amendment 131 to the Scheme, gazetted in April 2015, introduced a revised Development Plan (Refer Figure 1) and associated special provisions to guide future development of Karri Mia, including provision for a strata subdivision to allow smaller lots accommodating an owner/manager’s residence in conjunction with holiday accommodation units.

Acknowledging the broader intent of the Tourist zone and to prevent a primarily residential based subdivision from occurring Amendment 131 to TPS 3 introduced Condition iii(b) (Condition 3b) into the Scheme as follows:

*A grouped dwelling will not be approved on a strata lot unless a minimum of one (1) Holiday Accommodation (chalet) building has first been approved, constructed and made available for short stay accommodation purposes on the strata lot. Alternatively the Holiday Accommodation (chalet) building and the grouped dwelling can be constructed concurrently, however Council may impose conditions as deemed appropriate at the time of subdivision and/or development to ensure that the Holiday Accommodation (chalet) component of the development is constructed and operational prior to the grouped dwelling component of the development being occupied.*

In granting final approval to Amendment 131 the Minister for Planning resolved to introduce an additional special provision (Condition 24) as follows:

*Holiday Accommodation (chalets) are to be constructed prior to issue of titles for the strata lots.*

This Condition has proven to be problematic in practical application and has unduly restricted the creation of strata lots since the gazettal of Amendment 131 in April 2015.

This amendment seeks to remove Condition 24, noting that the remaining Conditions applicable to the Tourist (T1) zone can adequately control development so as to ensure tourism accommodation is undertaken in conjunction with any permanent residential dwelling.





## 2 BACKGROUND

### 2.1 IMPLICATIONS OF CONDITION 24

The inclusion of Condition 24, which requires holiday accommodation to be constructed prior to the issue of the title for the strata lots, is not necessary to prevent residential subdivision from occurring, recognising that the remaining Special Provisions will ensure a requirement for any permanent residence to be constructed concurrently or following the construction of holiday accommodation.

Condition 24 has proven overly restrictive in terms of allowing the orderly and feasible development of the site. The following considerations are raised in support of the Amendment.

#### 2.1.1 QUIET ENJOYMENT

The Karri Mia resort was an operational concern prior to the gazettal of Amendment 131 to the Scheme with a number of holiday accommodation bungalows and chalets already constructed on site. The developer was able to sell Survey Strata Lots 4 and 5, which comprised in total 2 bungalows and 3 chalets. The purchaser of Survey Strata Lots 4 and 5 has subsequently built a permanent residence on Survey Strata Lot 5. During construction of the permanent residence, the ability to use the nearby bungalows and chalet for short stay tourist accommodation was compromised by noise generated through building construction.

The reduced tariff from the loss of quiet enjoyment of the holiday accommodation makes it unviable for operation of the holiday accommodation for a period of time. The reduced revenue for both the current operations and anticipated future holiday accommodation units have adversely impacted the values of the property.

#### 2.1.2 REMOVAL OF CHOICE

The requirement for the landowner/developer to construct holiday accommodation prior to the issue of further survey-strata titles restricts the choice of a future purchaser as to how they can ultimately develop their property.

To be able to sell a survey strata lot, Condition 24 imposes a requirement upon the developer to finalise the location, size and design of holiday accommodation units on each site. Whilst design guidelines apply that influence aspects of the development of the site(s), the developer is not able to predict what the market may or may not require with respect to building size and location, plus not all buyers want the same product. The requirement for holiday accommodation to be built prior to the creation of title sterilises the land and prohibits any flexibility for future purchasers.

#### 2.1.3 STRATA FEE COST STRUCTURE

The current strata fee cost structure for the ongoing management of the site requires the total operating expense to be divided by the number of created survey strata lots. With the restriction on the creation of survey strata lots resultant from Condition 24, this places a heavy burden on the landowners of the current survey strata lots.

The ability to create survey strata lots without the impediment of Condition 24 will allow additional lots to be released for sale and enable a more equitable distribution of strata management costs.

It is noted, all of these items combined have unduly restricted the orderly and timely release of survey strata lots impacting the completion of development within Karri Mia as envisaged through gazettal of Amendment 131 and the approved Development Plan.

## 2.2 LEGAL DESCRIPTION

The legal description of the site is outlined in Table 1 below.

Table 1: Land Ownership Details:

LOT NO	VOLUME/FOLIO	OWNER	AREA
Lot 9 on Survey Strata Plan 72562 Mount Shadforth Road, Shadforth	2896/370	Bennett Range Pty Ltd	6.18ha

## 2.3 LOCAL CONTEXT

The site is located approximately 4km north west of the Denmark Town Centre and is accessed via Mount Shadforth Road. The site comprises 15.41ha, which is the englobo landholding of the original Karri Mia Resort. The caravan park, 7 survey strata tourist lots, the Chimes Spa Retreat, a restaurant and function centre have been subdivided from the original parent title.

Within the immediate context, the site is bounded by rural zoned land to the north, east and west and a Special Residential subdivision to the south.

## 2.4 REGIONAL CONTEXT

The site, located within the Shire of Denmark, is located approximately 410 km south of Perth.

The site is located on Mount Shadforth, which based on its exceptional vista to Wilson Inlet, the Nullaki Peninsula and the Southern Ocean, was one of the key reasons for its designation as a Tourist site and zoned accordingly. Within the locality other commercial tourist operations include chalets on South Coast Highway (Karma Chalets) and a restaurant and accommodation on the intersection of Cussons Road and Mt Shadforth Road (Castelli Estate).

It is noted in the Shire's Local Planning Strategy (LPS) there is no other resort style accommodation within the Shire, except for the Karri Mia Resort.

## 3 PLANNING CONTEXT

### 3.1 STATE GOVERNMENT

#### 3.1.1 PLANNING BULLETIN 83/2013 PLANNING FOR TOURISM

Planning Bulletin 83/2013- Planning for Tourism is relevant to the site. Section 7 relating to Mixed Use/Residential development within tourism sites provides for a component of permanent residential use subject to adherence to a number of principles.

The acceptability of residential development within Karri Mia and the intended lot yield has previously been established through the gazettal of Amendment 131, and the associated Development Plan. The removal of Condition 24 will not conflict with the requirements detailed in Planning Bulletin 83.

#### 3.1.2 REGIONAL PLANNING/CONTEXT – LOWER GREAT SOUTHERN STRATEGY 2016

The purpose of the Lower Great Southern Strategy (LGSS) is to guide regional land use and infrastructure planning and development, with a key focus being matters of regional significance. The LGSS addresses tourism by providing guidance on the use and promotion of tourism.

The LGSS acknowledges the ability for residential uses to be incorporated within tourism sites, as contemplated through Amendment 131. The removal of Condition 24 will not be in conflict with the LGSS.

### 3.2 LOCAL GOVERNMENT

#### 3.2.1 LOCAL PLANNING STRATEGY

The Shire of Denmark's LPS provides the vision to guide the future growth of Denmark and surrounding areas across a range of different disciplines and interests. One of the key planning objectives of the LPS as it relates to Tourism is as follows:

*To encourage eco-tourism and facilitate new tourism developments and choices of tourist accommodation types to enhance the Denmark Shire as a destination of choice for visitors.*

Furthermore, Strategy G relating to Tourism states as follows:

*To protect the longevity of tourist uses through appropriately zoned sites which contain flexibility for new development or extensions of existing developments to proceed.*

The removal of Condition 24 will not contravene the objective or the strategy, as the zoning of the site is not being challenged. Removing the impediment to the current development of the site imposed by Condition 24 will comply with the intent of the Tourism designation in the LPS by:

1. Providing future purchasers with choice in the form of tourist accommodation they wish to construct. This is in contrast to the current scenario imposed by Condition 24 which makes the developer responsible for construction of the tourist use, limiting flexibility and market choice.

2. Allowing strata lots to be made available for purchase, encouraging additional tourism investment and improving the viability and longevity of tourism uses within the sites.

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### 3.2.2 SHIRE OF DENMARK TOURISM PLANNING STRATEGY- STAGE 1

The Shire of Denmark's Tourism Planning Strategy Stage 1 (Strategy) acknowledges the ability for permanent residents to be accommodated in tourism areas, including Karri Mia. It is noted that further investigation is required through a Local Planning Policy to ensure that residential development does not jeopardise the nature of such tourist sites, whilst also acknowledging permanent residents provide a level of financial stability to tourism operations.

No additional permanent residential dwellings are being sought beyond that which can already be accommodated under the approved Development Plan and Special Conditions applicable to the Tourist (T1) zone. It has previously been determined that the residential component will not detract from the tourism value of the site and will contribute to the viability of the site as a whole.

As previously stated, the operation of Karri Mia is currently financed by survey strata fees. With less lots created there becomes a survey strata cost burden on the existing lot owners. In removing Condition 24, the burden of creating additional survey strata lots will be lifted allowing new unencumbered lots on the property market, equalising pro rata strata fee costs and providing permanent residents with greater financial stability.

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### 3.2.3 TOWN PLANNING SCHEME NO. 3

Through the gazettal of Amendment 131 and the associated TDP and Scheme Conditions, survey strata subdivision can be facilitated on the site.

The provision of Condition 3(b) as detailed in Appendix XIII of the Scheme will ensure that any future strata lots are developed in conjunction with the broader tourism base at Karri Mia and do not revert to a de-facto residential subdivision. Legal advice submitted by the proponent (refer Appendix 1) confirms that Condition 3(b) provides complete guarantee to the Shire of Denmark that should a Grouped Dwelling and Holiday Accommodation be approved through a development application process (as required under Condition 3(b)), the issue of the development application can ensure both the Grouped Dwelling and Holiday Accommodation will be constructed and completed concurrently. Should any future lot owner not commence or complete construction of the Holiday Accommodation prior to the Grouped Dwelling, the Shire has the legal ability to enforce the construction and completion of the holiday accommodation component.

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### 3.2.4 TOWN PLANNING SCHEME NO.3 POLICY NO 46 KARRI MIA TOURIST ZONE

The preparation of design guidelines was required through the gazettal of Amendment 131 to accommodate future development on the site. The implementation of these guidelines is addressed through TPS3 Policy No. 46 Karri Mia Tourist Zone Design Guidelines.

The removal of Condition 24 will not have any impact on this Policy.

This report has outlined the rationale for a request to amend the Scheme to remove Clause 24 from the “Tourist (T1)” zone provisions as it relates to Lot 9 on Survey Strata Plan 72562 Mount Shadforth Road, Shadforth. The removal of Condition 24 does not contradict the Tourist zoning of the site, associated Scheme Provisions and relevant Strategic Policies.

The deletion of Condition 24 will remove those constraints currently in place that are limiting the release of further strata lots, will facilitate additional tourism development and investment, and improve the viability of the site as whole consistent with the intent of the Tourist zone.

# Appendix 1

## Legal Advice

**Planning and Development Act 2005**  
**Shire of Denmark**  
**Town Planning Scheme No.3**  
**Amendment No. 145**

The Council of the Shire of Denmark under and by virtue of the powers conferred upon it in that behalf by the *Planning and Development Act 2005*, hereby amends the above Local Planning Scheme by:

Removing Condition xxiv) from the “Tourist (T1)” zone provisions under Appendix XIII  
– Schedule of Tourist Zones.

**ADOPTION**

Adopted by resolution of the Council of the Shire of Denmark at the ..... Meeting of the Council held on the ..... day of ..... 20..

.....  
Shire President

.....  
Chief Executive Officer

**FINAL APPROVAL**

Adopted for final approval by resolution of the Council of the Shire of Denmark at the ..... Meeting of the Council held on the ..... day of ..... 20.... and the Common Seal of the Shire was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....  
Shire President

.....  
Chief Executive Officer

**Recommended/Submitted for Final Approval**

.....  
Delegated under S.16 of PD Act 2005

.....  
Date

**Final Approval Granted**

.....  
Minister for Planning

.....  
Date



## APPENDIX XIII - SCHEDULE OF TOURIST ZONES

PARTICULARS OF THE LAND	TOURIST USE	CONDITIONS OF TOURIST USE					
<p>T 1. Lots 83, 84 &amp; 85 Mt Shadforth Road, Denmark.</p> <p>- AMD 131 GG 2/4/15</p>	<p>Karri Mia Tourist Zone</p>	<p>i) Notwithstanding any other provisions of the Scheme, the following land uses are the only permissible land uses within the Karri Mia Tourist zone as shown on the Karri Mia Development Plan: 09-16-DP(t), or any minor variation thereto approved by Council.</p>					
		USES	Lot 84 (prop osed Lot 1)	Lot 84 (prop osed Lot 2)	83	85	
		Boarding House (including Beauty salon)				P	
		Caravan Park	P				
		Cinema/Theatre				P	
		Function Centre (Maximum 200 persons)			P		
		Gallery/Restaurant				P	
		Grouped Dwelling (Refer to Condition No. iii below)		P			
		Holiday Accommodation	P	P		P	
		Holiday Home (Standard)		P			
		Home Occupation		P			
		Manager's Accommodation	IP	IP	IP	IP	
		Microbrewery			P		
		Motel	P				
		Office	IP	IP	IP	IP	
		Public Exhibition				P	
		Restaurant			P		
		<p><i>Where no symbol appears in the cross reference of a use class against a lot number, use of that class is not permitted on that lot.</i></p>					
		<p>(ii) Development and subdivision shall be generally in accordance with the Karri Mia Development Plan 09-16-DP(t) or any variation to that plan approved by Council. Subdivision of Lot 84 (proposed Lot 2) shall be by way of strata title only.</p> <p>(iii) (a) Only one (1) grouped dwelling per strata lot on Lot 84 (proposed Lot 2) is permitted.</p> <p>(b) A grouped dwelling will not be approved on a strata lot unless a minimum of one (1) Holiday Accommodation (chalet) building has first been approved, constructed and made available for short stay accommodation purposes on the strata lot. Alternatively the Holiday Accommodation (chalet) building and the grouped dwelling can be constructed concurrently, however Council may impose conditions as deemed appropriate at the time of subdivision and/or development to ensure that the Holiday Accommodation (chalet) component of the development is constructed and operational prior to the grouped dwelling component of the development being occupied.</p>					

## APPENDIX XIII - SCHEDULE OF TOURIST ZONES (Cont'd)

	PARTICULARS OF THE LAND	TOURIST USE	CONDITIONS OF TOURIST USE
T 1.	<p>Lots 83, 84 &amp; 85 Mt Shadforth Road, Denmark. (Cont'd)</p> <p>- AMD 131 GG 2/4/15</p>		<p>(iv) Council will request the WAPC to impose a condition at the time of subdivision for the provision and implementation of an overall Landscape Plan for the Landscape Building Setback areas as designated on the Tourist Development Plan. Planting proposals within the Landscape Building Setback area associated with Lot 84 (proposed Lot 2) shall have due regard to the tourism development form proposed on the site.</p> <p>(v) Council will request the WAPC to impose a condition at the time of subdivision for the provision of reticulated water to the lots.</p> <p>(vi) Building setbacks to the external property boundaries of the tourist zone (being Lots 83, 84 &amp; 85) being a minimum of 20 metres.</p> <p>(vii) No development will be considered in the 'Building Exclusion Areas' designated on the Tourist Development Plan.</p> <p>(viii) Vehicular access shall be limited to nominated points on Mount Shadforth Road as approved by Council.</p> <p>(ix) Development shall be connected to on-site alternative treatment unit effluent disposal systems installed on each lot (including strata lots) to the satisfaction of the Department of Health and Council.</p> <p>(x) Council will require as a condition of development or subdivision (including strata subdivision) the preparation and implementation of a Fire Management Plan approved by Council.</p> <p>(xi) Council will request the WAPC to impose a condition at the time of subdivision relating to the provision of reciprocal rights of access/common property arrangements where shared access is proposed.</p> <p>(xii) Council may request the WAPC to impose a condition at the time of subdivision for upgrading Mount Shadforth Road.</p> <p>(xiii) All buildings shall be constructed to "AS 3959-2009 Construction of Buildings in Bush Fire Prone Areas" (as amended) with no building requiring greater construction rating than BAL-29.</p> <p>(xiv) Design guidelines are to be prepared and adopted to ensure the integration of the Holiday Accommodation (chalet) and grouped dwelling shall address the following -</p> <ul style="list-style-type: none"> <li>• Holiday Accommodation units shall be specifically designed for the needs of visitors and avoid large floor areas that resemble residential premises.</li> <li>• Holiday Accommodation units are to have a maximum of two bedrooms only.</li> <li>• The external form of development is to be of uniform and complimentary architectural theme, character, colours and materials.</li> <li>• The residential component is to be of a design and scale to ensure chalet and owner/manager accommodation blend together and visitors to the site should not be able to differentiate between the two.</li> <li>• All buildings constructed within the zone shall be sympathetic to the existing landscape in terms of location, scale, height, building materials and colour.</li> </ul>

## APPENDIX XIII - SCHEDULE OF TOURIST ZONES (Cont'd)

	PARTICULARS OF THE LAND	TOURIST USE	CONDITIONS OF TOURIST USE
T 1.	<p>Lots 83, 84 &amp; 85 Mt Shadforth Road, Denmark. (Cont'd)</p> <p>- AMD 131 GG 2/4/15</p>		<ul style="list-style-type: none"> <li>• Demonstrate viewlines will be protected.</li> <li>• Provide 3D model/imagery of the development.</li> <li>• Setbacks from lot boundaries and separation distances between holiday accommodation and grouped dwellings.</li> </ul> <p>All development within Lot 84 (proposed Lot 2) shall be developed in accordance with design guidelines prepared to the satisfaction of Council.</p> <p>(xv) Council will request the Commission to impose a condition at the time of subdivision for a notification on the Certificate of Title for all new lots advising prospective purchasers that –</p> <ul style="list-style-type: none"> <li>a) This land is located in a rural area and rural activities may be undertaken on neighbouring land that may result in potential noise, dust and odour nuisances that may affect the use or enjoyment of the land;</li> <li>b) The site is zoned 'Tourism' and associated uses may result in increased levels of noise and vehicular movement.</li> </ul> <p>(xvi) Fencing of strata lots shall not be permitted.</p> <p>(xvii) Outbuildings are not permitted on any strata lot within Lot 84 (proposed Lot 2) as all storage/garaging needs should be incorporated into the design of the dwelling.</p> <p>(xviii) The following requirements will apply to any strata titling proposal of the development within Lot 84 (proposed Lot 2) –</p> <ul style="list-style-type: none"> <li>(a) Restriction of length of stay to 3 months in any one year except for owner/manager's accommodation.</li> <li>(b) An agreement between the applicant and Council to ensure that a manager/operator is available to provide for on-site management of the common property, overall landscape management, fire control, security and where required by owner/managers, provision of a letting/management service, including marketing, maintenance, refurbishment and other services reasonably required for the development to operate as a tourist facility.</li> <li>(c) All Holiday Accommodation (chalets) are required to be managed and maintained by the strata company with no individual management or fit out of chalets permitted. Opting out of the central management by individual owners will not be permitted.</li> </ul> <p>(xix) (a) All external illumination shall be of low level, controlled spill lighting, with any variations requiring Council approval;</p> <p>(b) External illumination associated with the Restaurant and the Function Centre shall occur for no more than 15 minutes after these uses cease operating at night; and</p> <p>(c) On-site street lighting for personal safety shall not be illuminated later than 12.00 midnight.</p> <p>(xx) Any changes to the management statement require the approval of the WAPC and the management statement must bind successive owners.</p>

## APPENDIX XIII - SCHEDULE OF TOURIST ZONES (Cont'd)

	PARTICULARS OF THE LAND	TOURIST USE	CONDITIONS OF TOURIST USE
T 1.	<p>Lots 83, 84 &amp; 85 Mt Shadforth Road, Denmark. (Cont'd)</p> <p>- AMD 131 GG 2/4/15</p>		<p>(xxi) A local water management strategy is required to be endorsed prior to development of the site.</p> <p>(xxii) The total number of grouped dwellings relative to the total number of Holiday Accommodation (chalets) shall be equal to or less than 35% across Lot 84 (proposed Lot 2). Development and building approval will only be granted which achieves a 35% ratio.</p> <p>(xxiii) A maximum of 26 grouped dwellings will be permitted on Lot 84 (proposed Lot 2). A minimum of 48 Holiday Accommodation (chalets) are to be developed on Lot 84 (proposed Lot 2).</p> <p>(xxiv) Holiday Accommodation (chalets) are to be constructed prior to issue of titles for the strata lots.</p>